

Montana Water Court  
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MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Douglas B. Campbell II

**CASE 43B-0744-R-2022**  
43B 193920-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following issue remarks:

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$40.00

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 93.13 GPM PER ACRE.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remarks were not addressed and resolved through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

The December 1, 2022 Court Minutes and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimant and the Bozeman Regional DNRC Office ["DNRC"] to resolve the issue remarks. The March 10, 2023 DNRC Memorandum makes a recommendation concerning the flow rate issue remark but not for the other issue remarks. Nothing was filed by the claimant.

The April 12, 2023 Court Minutes and Order Setting Filing Deadline includes the following:

The issue remarks were discussed. Mr. Campbell agreed with the Court memorializing the information he provided in these Court Minutes:

The 2008 flood washed out the bridge to the property, the headgate is now in the middle of the creek, and the ditch was wiped out as well. Reducing the flow rate to the standard is fine.

This information addresses and resolves the point of diversion issue remark and the flow rate issue remark.

On July 14, 2023 the filing fee was paid. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and

overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the flow rate is 372.50 GPM. The flow rate should be 56.00 GPM. The flow rate issue remark should be removed as addressed and resolved.

2. The point of diversion does not require change. The point of diversion issue remark should be removed as addressed and resolved.

3. The filing fee was paid. The filing fee issue remark should be removed as now moot.

4. The Preliminary Decree also includes the following notice remarks:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION IN MAXIMUM ACRES IRRIGATED.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED RIGHT ON TRAIL CREEK WITH A PRIORITY DATE 01/17/1888 CASE NO 336, PARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

These notice remarks should be removed as having served their notice purpose.

#### CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service via USPS Mail:**

Douglas B. Campbell II  
2210 Highland Ct  
Bozeman, MT 59715

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193920-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DOUGLAS B CAMPBELL II  
2210 HIGHLAND CT  
BOZEMAN, MT 59715 6049

**Priority Date:** JANUARY 17, 1888

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 56.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 4.00

**Source Name:** TRAIL CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	28	3S	8E	PARK

**Period of Diversion:** MAY 25 TO SEPTEMBER 5

**Diversion Means:** HEADGATE

**Period of Use:** MAY 25 TO SEPTEMBER 5

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.00		SEWNNE	28	3S	8E	PARK
2	1.00		SWNENE	28	3S	8E	PARK
<b>Total:</b>	4.00						